

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JAMES LEE CECIL, Jr.)	
Plaintiff,)	Civil Action Nos. 7:23-cv-00507
)	
v.)	
)	By: Elizabeth K. Dillon
SERGEANT D.W. HAMRICK, <i>et al.</i> ,)	United States District Judge
Defendants.)	

MEMORANDUM OPINION AND ORDER

This action was brought by *pro se* plaintiff James Lee Cecil, Jr., formerly a prisoner in the custody of the Virginia Department of Corrections. Cecil filed this case on August 11, 2023, and he paid the entire filing fee. Thus, Cecil was responsible for effecting service on the defendants within 90 days. *See* Fed. R. Civ. P. 4(m). The court mailed procedural instructions for service to Cecil, as well as copies of basic service documents. (Dkt. No. 3.) On August 30, Cecil filed Return of Service forms for each of the three defendants. (Dkt. No. 4.) Cecil has also filed two motions to amend his complaint (Dkt. Nos. 2, 5), two motions for entry of default (Dkt. Nos. 10, 14), and a motion to direct defendants to answer his complaint (Dkt. No. 12).

As noted, plaintiff filed Return of Service forms for each of the three defendants; however, he did not fully comply with the requirements of Rule 4, set forth in the instruction packet that was mailed to plaintiff. Specifically, the instructions explain that in addition to the proof of service, plaintiff must also file a summons for each defendant with the court's seal affixed thereto. *See* Fed. R. Civ. P. 4(a)(1)(G) (providing the required contents of a summons, including that it bear the court's seal). Plaintiff has not filed these documents with the court. Thus, plaintiff has not complied with Rule 4's requirement that he accomplish service within 90

days of filing this lawsuit. However, because plaintiff is proceeding *pro se*, the court finds that there is good cause to extend the time to effect service under Rule 4(m).

As for the remaining motions, the court will grant the second motion for leave to amend and deny the first such motion as moot. *See* Fed. R. Civ. P. 15(a) (providing that a party may amend its pleading once as a matter of course no later than 21 days after serving it). Due to the lack of proper service, the court will deny the motions for entry of default and the motion to direct defendants to file an answer.

Therefore, based on the foregoing, it is HEREBY ORDERED that:

1. Plaintiff's second motion to amend his complaint (Dkt. No. 5) is GRANTED;
2. Plaintiff's first motion to amend (Dkt. No. 2) is DENIED without prejudice as moot;
3. Plaintiff's motions for entry of default (Dkt. Nos. 10, 14) are DENIED;
4. Plaintiff's motion to direct an answer (Dkt. No. 12) is DENIED; and
5. Pursuant to Federal Rule of Civil Procedure 4(m), finding that there is good cause to extend the time to effect service, plaintiff shall accomplish service within sixty (60) days of the date of this order. The Clerk is DIRECTED to provide plaintiff with the procedural instructions for service, as well as copies of basic service documents. If plaintiff fails to accomplish service within 60 days, his case may be dismissed without prejudice. If plaintiff believes he is unable to afford service of process, he may apply to proceed in forma pauperis.

Entered: January 23, 2024.

/s/ Elizabeth K. Dillon

Elizabeth K. Dillon
United States District Judge